

FILED  
MAY 20 2009  
DENNIS P. JAVARONE, CLERK  
US DISTRICT COURT, EDNC  
BY SJR DEP CLK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA

DENNIS NIELSEN  
*Pro Se*

Plaintiff

-against-

UNITED STATES DEPARTMENT OF  
TREASURY,

Defendant

COMPLAINT

5:09-cv-217-FL

Plaintiff allege for his complaint

THE PARTIES

1. Plaintiff is a resident of North Carolina.
2. Defendant United States Department of Treasury (the "Department") is an agency of the federal government. Among its functions it regulates the activities of the Internal Revenue Service (IRS) to do transactions that are subject to regulation by the United States.
3. One of the Department's operating units is the IRS, which administers the personal, corporate and business functions of the income taxing program. In addition it regulates the electronic filing of tax preparation and does other such functions such as keep records, files and data.

### **JURISDICTION**

4. This action arises under 5 U.S.C 552 et seq. (the Freedom of Information Act or FOIA). This court has jurisdiction of this action under 5 U.S.C. 552(a)(4)(B).

### **VENUE**

5. Venue is premised on the place of residence of the Plaintiff and is proper in this district under 5 U.S.C. 552 (a) (4) (b).

### **FACTS**

6. This action arises from the failure of the Department to disclose certain documents in response to requests made by the Plaintiff pursuant to the FOIA.

7. On or about November 24, 2008 (FOIA case number 07-2009-00297), the Plaintiff made request (the "Request") for notes, emails, letters, memos and other documents regarding the North Carolina Economics Center, Inc (NEAC), Dennis Nielsen and Dennis Voyles for calendar year 2008. The requests was sent to the IRS Disclosure Office in Jacksonville, FL.

8. The Department acknowledged the receipt in a letter dated December 2, 2008.

9. The Department sent three more responses to the original FOIA request, each of these being the same form letter asking the Plaintiff to authorize release of "tax records."

10. The Plaintiff responded to each of the letters stating that his original request and all follow on letters made it very clear that he was not asking for copies of “tax returns.”

11. The Plaintiff reminded the Department that in accordance with the FOIA they must release records that “are” releasable and if there are records that contain privacy information the Department must redact the information. The Plaintiff further reminded the Department that they cannot deny a request in its entirety if they can only use an exemption for part of the request. The Plaintiff asked in the four replies to the Department’s letters they provide the information they could provide under the FOIA.

12. On February 2, 2009 the Department sent a letter to the Plaintiff indicating that his letter was a response to the Plaintiffs request of January 18, 2009 (Case # 07-2009-00674); however there was no new request as this was the same request submitted in November 24, 2008. The Department got confused and thought this was a new request when in fact it was not and this was made very clear in the Plaintiffs January 18<sup>th</sup> letter.

13. The Plaintiff appealed the case to the Department on March 2, 2009 and received a denial of his appeal on May 1, 2009.

14. NEAC is a 501 (c) (3) non-profit corporation and as its tax records, application and letters to it are by definition public record.

15. The Plaintiff is one of the co-incorporators of NEAC and is the responsible party who signs tax returns (IRS Form 990) for NEAC.

16. The Department's response to the appeal states, " IRS records do not indicate that you (Plaintiff) are the authorized agent for Dennis Voyles or North Carolina Economics Assistance Center." The Department is incorrect in that the Plaintiff "is" the agent for North Carolina Economics Center.

17. The Appeal goes on to state, "return information" is defined under I.R.C. Section 6103 (b)(2)(A) this is stipulated by the Plaintiff but what the Department is missing is the Plaintiff never asked for return information and even if he had the information was for a return of a non-profit corporation which is fully releasable as a public record. Also the Plaintiff is the authorized agent to release "return information" if it was asked for.

### **COUNT 1**

18. The Plaintiff, repeats, realleges and incorporates the allegations in the foregoing paragraphs as though fully set forth herein

19. The Department, as an agency subject to FOIA, must release in response to a FOIA request any disclosable documents in its possession at the time of the request and provide a lawful reason for withholding any materials as to which it is claiming as an exemption.

20. Under 5 U.S.C. 552 (a)(6)(A), the Department was required to provide documents or issue a denial within 20 business days of the receiving the Request.

21. The Plaintiff has exhausted his administrative remedies as to the Request and this Court has jurisdiction to hear this matter.

22. The Department has asserted no lawful basis under FOIA for withholding the materials sought by the Request.

23. The Department has erroneously misinterpreted the Request to mean "tax returns".

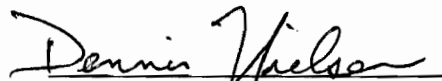
24. The failure of the Department to provide these materials violated FOIA.

25. The Plaintiff is entitled to an order compelling the Department to produce these materials.

WHEREFORE, the Plaintiff respectfully requests that this Court enter judgment on its behalf:

- a. declaring that the materials sought by the Request are public under FOIA;
- b. directing the Department to provide the materials to the Plaintiff within 20 days of the Court's order;
- c. awarding all costs of this proceeding to the Plaintiff;
- d. granting to the Plaintiff such other and further relief as this Court deems just and appropriate.

Dated: May 20, 2009  
Nash County, NC

A handwritten signature in cursive script, reading "Dennis Nielsen", written over a horizontal line.

Dennis Nielsen,  
2667 Reges Store Rd  
Nashville, NC 27856  
Ph: 252-459-9799

THE PLAINTIFF